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EXAMINER				
AKHAVANNIK, HADI				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/614,753

Applicant(s)

BETRA, GISELE

Examiner

HADI AKHAVANNIK

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-44 and 46-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-44, 46-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Claim 45 is cancelled.

Applicant's arguments with respect to claim 1 and 3-50 have been considered but are not persuasive.

The previous 112 rejections are withdrawn however new 112 rejections are made with regards to the new amendments. The examiner is unable to understand the newly amended claims and therefore will examine the claims as if the new limitations that are rejected under 35 USC 112 were not in the claims.

In response to applicant's argument that Smith and Bazin is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Bazin and Smith are from the field of body imaging.

The argument with respect to the many intermediate degrees is not persuasive because the examiner cannot find support for this limitation.

This rejection is made final.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 1, 3-50 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The independent claims each recite "only one degree of the characteristic..." The Examiner has found no support for this limitation. Specifically, the specification discloses finding degrees (plural) of a characteristic and not only one. Also, the examiner does not understand how its possible to show only one degree. For example, in figure 3, box 21 of the drawings show hair. Within that hair there will be many degrees of characteristics, with some hair being more oily than others for example. The examiner respectfully requests the Applicant to show the area the specification that discloses this limitation.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 3-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The independent claims recite "the characteristic being at least one of aging..." The examiner believes this limitation contradicts the limitation above which discloses "expressing only one degree of the characteristic." For example, even a small hair or skin sample will exhibit multiple degrees of aging or

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sagging since ones skin is not completely uniform. Further, how can one select more than of the characteristics, aging and wrinkles for example, and yet have only one degree of the characteristic (**singular, as required by the previous limitation**). The examiner believes that if one were to select more than one characteristic then one would also have more than one degree of a characteristic because the degree of wrinkles will be different from a degree of aging. Therefore, it appears that this limitation is contradictory to the previous limitation. In any case, the examiner requests the Applicant to provide the portion of the specification that discloses this limitation or explain why these limitations do not contradict each other.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-8 are rejected under 35 USC 103(a) as being unpatentable over Smith et al (6253210, referred to as "Smith" herein) in view Bazin (EP 1216658, provided by applicant in the IDS)

Regarding claim 1, Smith discloses an atlas with a plurality of images (figure 6, item 610, column 5 lines 4-16 discloses an atlas which has plurality of medical images. Each medical image shows a different view)

and at least one video sequence associated with at least one characteristic of the body typology (column 9 lines 34-57 discloses associating a video with the atlas images).

Smith does not explicitly disclose displaying different degrees of the body typology.

Bazin discloses displaying video corresponding to different grades of at least one characteristic of body typology (see column 3 paragraphs 27-28 and figure 4).

Bazin also discloses wrinkles of the skin located on the face in paragraphs 27.

It would have been obvious at the time of the invention to one of ordinary skill in the art to include in Smith a multiple image grades displaying means as taught by Bazin. The reason for the combination is because it allows the operator to make a selection of the body typology by comparing it against multiple expert images.

Please note that neither Smith nor Bazin explicitly disclose examining the scalp. However the examiner takes official notice that it would have been exceedingly obvious at the time of the invention to examine the scalp portion of the face. In figures 6 and 12 of Bazin he discloses examining skin on the face and it would have been obvious to specify the scalp because it is just another portion of the skin on the face.

Regarding claim 3, Smith discloses displaying the images simultaneously on a screen (figure 6 of Smith discloses displaying at least 4 images from an atlas).

Regarding claim 4, Smith discloses that a fraction only of the images of the atlas is displayed simultaneously on a screen (column 9 lines 45-55 disclose that only images

of the putamen are shown if the operator selects the putamen. The atlas has many images related to many medical images).

Regarding claim 5, Smith discloses that at least one image of the atlas is displayed on a screen, and wherein the atlas is configured in such a manner that acting on a cursor enables the displayed image to be replaced by another image of the atlas (see column 6 line 56 to column 7 line 30 and column 9 lines 48-57 discloses that a user is able to select an image and that image is replaced by another image or a sequence of images which makes a video).

Regarding claim 6, Smith discloses that the images of the atlas are generated by morphing (see figures 3 and 4 and column 7 lines 3-37 discloses that images or morphed to fit patient data in the mapping engine).

Regarding claim 7, Smith discloses including action buttons associated with the respective images of the atlas and enabling display of the corresponding video sequence to be triggered (see column 9 line 53 as it discloses a "play movie" button).

Regarding claim 8, the examiner takes official notice that it would have been exceedingly obvious at the time of the invention to one of ordinary skill in the art at the time of the invention to include in Smith in view of Bazin a means to associate audio to the video clips. The reason for the combination is because it makes for a more robust system that can play audio titles of the video clips and promote a better user interface. Also, please note that Smith already discloses audio and video clips in an atlas in column 5 lines 5-7.

4. Claims 9-15, 17-44, 45, 46-50 are rejected under 35 USC 103(a) as being unpatentable over Smith in view of Bazin as applied to claim 1 above and in further view of Kenet et al. (5016173, referred to as "Kenet" herein).

Regarding claim 9, the rejection of claim 1 discloses all aspects of claim 9 except it does not explicitly disclose using a camera to acquire an image.

Kenet discloses using a camera to capture an image (column 9 lines 40-63, disclose using a camera).

It would have been obvious at the time of the invention to one of ordinary skill in the art to include in Smith and Bazin a camera to acquire images as taught by Kenet. The reason for the combination is because a camera is the most common device used to acquire images. Further, both Smith and Bazin disclose using electronic images.

Regarding claim 10, Kenet discloses using different magnifications (see column 9 lines 49-63).

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Bazin in view of Kenet.

Kenet discloses a magnification means on a camera.

Kenet does not disclose expressly a magnification factor greater than equal to 20 or 160.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to specify the magnification factor. Applicant has not disclosed that specifying the magnification provides an advantage, is used for a particular purpose or solves a stated problem. One of ordinary skill in the art, furthermore, would have

expected Applicant's invention to perform equally well with any magnification level because the exact magnification does not alter the overall functionality of the system.

Therefore, it would have been obvious to combine to one of ordinary skill in this art to modify the magnification level of Kenet to obtain the invention as specified in claim 11.

Regarding claim 12, the examiner takes official notice that it would have been exceedingly obvious at the time of the invention to one of ordinary skill in the art to include in the combination of Smith, Bazin and Kenet a push button that freezes an image. The reason is because Smith already discloses a buttons that are used to play video and it is very well known to have a button that results in an image being displayed.

Regarding claim 13, please see figure 2, item 245 of Smith as it discloses a microprocessor.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Bazin in view of Kenet.

Smith discloses a video displaying means.

Smith does not disclose expressly disclose that the video will last for 5 seconds.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to set the exact time length for the video to be displayed. Applicant has not disclosed that displaying the video for 5 seconds provides an advantage, is used for a particular purpose or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with any

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time frame because the duration of video clip does not alter the overall functionality of the invention.

Therefore, it would have been obvious to combine to one of ordinary skill in this art to modify the duration of the video of Smith to obtain the invention as specified in claim 14.

Regarding claim 15, Smith discloses a computer and any computer has a means of being turned off. Therefore, the user can interrupt the video by turning off the computer.

Regarding claim 17, Kenet discloses an illumination means (see column 6 lines 23-29)

Regarding claim 18, Kenet discloses that the lighting can be selected between lighting of the following types: UV, IR, or visible light (see column 6 lines 2-23 as discloses IR and visible light).

Regarding claims 19 and 20, the rejection of claim 10 discloses that the image does not have to be magnified and if the image is not magnified then the image display will be similar to the image coming from the camera. Also, the images are always associated with the images coming from the camera because the camera takes the images.

Regarding claim 21, the examiner notes that all images are frozen images. Non-frozen images are commonly referred to as video.

Regarding claim 22, the examiner notes that the digital camera used by Kenet is capable of measuring many color magnitudes because all camera must be able to measure many color magnitudes.

Regarding claim 23, the examiner notes that a camera must be able to measure skin color in order to produce a quality image.

Regarding claim 24, Kenet discloses a printer in column 5 lines 5-9.

Regarding claim 25, Smith discloses that the processor means are configured to establish a diagnosis on the basis of at least one image selected from the atlas (see column 9 lines 2-33 as it discloses diagnostic means).

Regarding claim 26, Smith discloses that all the information is sent to a remote point which is a computer.

Regarding claims 27 and 28, Smith discloses using an atlas and diagnosing the type of body typology in the rejection of claim 25.

Regarding claim 29, please see the rejection of claim 25 as it discloses all aspects of claim 29.

Regarding claim 30, the rejection of claim 29 also discloses using a camera.

Regarding claim 31, the rejection of claim 26 discloses that the diagnosis is done by the microprocessor on the computer.

Regarding claim 32, please see the rejection of claim 25 and also see Smith, column 9 lines 18-25 as it discloses treatment planning.

Regarding claim 33, the rejection of claim 32 discloses that a camera is used.

Regarding claim 34, the rejection of claim 31 discloses all aspects of claim 34.

Regarding claims 43-44, the rejection of claim 9 discloses all aspects of claims 43-44.

Regarding claims 35-36, Krusin discloses locating hair and other skin blotches (see column 12, line 58 to column 13 line 5 and column 14 lines 45-62 as it disclose finding skin conditions and the presence of hair in medical images).

Regarding claims 37-42, the rejection of claims 35-36 also disclose all aspects of claims 37-42 as they disclose finding the conditions of the skin.

Regarding claims 46-50, please see the rejection of claims 1, 9, and 25 as they disclose all aspects of claims 46-50. Note that Bazin discloses prescribing cosmetic materials in paragraphs 60-62.

1. Claim 16 is rejected under 35 USC 103 as being unpatentable over Smith in view of Bazin in view of Krusin as applied to claim 15 above and in further view of Chin et al. (4998972, referred to as "Chin" herein).

Regarding claim 16, Smith and Qian disclose all aspects of claim 16 except they do not disclose that the apparatus being configured, after the running of a video sequence has been interrupted, to enable a new image to be acquired with the camera, the field of observation of the camera being displayed on the screen simultaneously with the image on which the sequence has been frozen.

Chin discloses that the apparatus being configured, after the running of a video sequence has been interrupted, to enable a new image to be acquired with the camera, the field of observation of the camera being displayed on the screen simultaneously with the image on which the sequence has been frozen (see column 2 lines 16-32 as it

discloses freezes or interrupting the previous image and then showing a new live image simultaneously with the old image.

It would have been obvious at the time of the invention to one of ordinary skill in the art to include in Smith and Qian an multiple image viewing means as taught by Chin. The reason for the combination is because it allows the system to be more robust and lets the user diagnose a body typology in real time. See motivation by Chin in column 2 lines 33-43. Further all inventions are from the same field of endeavor or medical imaging.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HADI AKHAVANNIK whose telephone number is (571)272-8622. The examiner can normally be reached on 10:30-7:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jingge Wu can be reached on 571-272-7429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jingge Wu/
Supervisory Patent Examiner, Art Unit 2624

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6/27/08